Reliance has also been placed on the case of *B.A. Rao & Ors* v. *Sapuran Kaur & Anor*[4] With respect, the Federal Court was dealing with a civil action for damages for negligence and that case is therefore distinguishable from the present.

Reference has also been made to the case of *Krishna Dayal* v. *Emperor*[5], where counsel for the defence read the following passage:

"Criminal trial–inspection of documents – refusal on ground that they were not referred to by prosecution is bad–accused must be given wider scope."

The next line reads: Admissibility of a document is the rule and not the exception.

It is further stated that "Every document, particularly in a criminal trial, must be admitted in evidence to throw light on the obscure corners of the case. That light should always be welcome, unless its entry in the court is shut out for very special reasons, because the object of a trial in every case is to ascertain the truth in respect or the charge made. Hence, denial of an opportunity to inspect documents because they were not referred to by Crown counsel is wrong. A cross-examining counsel is entitled to cover a much wider field and refer to many more documents than the counsel who has conducted the examination-in-chief, if for nothing else, to test the veracity of the witness."

If one were to examine the judgment of Sinha J. closely, it is quite plain that the learned judge there was concerned with the question of admissibility of evidence tendered by the prosecution. In my opinion, this case is no authority for the proposition that an order for inspection of documents in the custody of the prosecution should be granted before the criminal trial. In my view, when any document of a complicated nature is tendered in evidence, if the defence want time to study it, they can always apply to the court for extra time and if need be, to stand down cross-examination to a later time.

For the above reasons, I disallow the application.

Application disallowed.

Solicitors: *Ee & Lim*

LEE BAN HOO & ANOR. v. S. VEERIAH & ANOR.

[O.C.J. (George J.) September 30, 1981]
[Kuantan – Civil Suit No. 65 of 1980]

Damages – Fatal road accident – Deceased motorcyclist partly negligent – Quantum.

Torts – Motor accident – Liability of bus driver overtaking motorcyclist – Death – Damages – Civil Law Act 1956, s. 8.

A 35 year old female motorcyclist, wife of PW2, died as a result of injuries sustained by her in a road accident between her motorcycle and a bus driven by the second defendant. The facts revealed that the deceased was probably about 6 feet from the left edge of the road making it necessary for the lorry to go over the centre line in trying to overtake her. There was an oncoming car and the lorry driver in hurrying to get back to his lane caused the near left of the lorry to hit the deceased.

Held: (1) the motorcyclist was herself negligent in not having anticipated that with the heavy traffic on both motor lanes there was every possibility that the motor lorry that was overtaking her would have had to swerve back into its own lane. A prudent motorcyclist would have moved nearer the left edge of the road when the motor lorry proceeded to encroach beyond the centre white line in overtaking her;

(2) the driver of the motor lorry was 70% to blame for the accident and the deceased motorcyclist 30% to blame;

(3) the plaintiffs were awarded: damages in the sum of $2,800 (70% of $4,000) under section 8 of the Civil Law Act and agreed special damages, 70% of $1,156 and interest; 70% of $7,200 for loss of dependency at $200 a month for 3 years from the date of death of the deceased to the date of judgment plus interest and 70% of $22,500 for loss of dependency for a further period of 13 years with interest.

CIVIL SUIT.

Balendran Shah for the plaintiffs.

S.B. Veloo for the defendants.

George J.: On July 10, 1978 Leong Ah Moi the wife of PW2 died as a result of injuries sustained by her in a road accident that occurred at about 1.45 p.m. on that day at or near the junction of Jalan Besar and Jalan Penjara, Kuantan.

The second named defendant who gave evidence as DW1 testified that at about 1.45 p.m. on July 10, 1978 he was travelling towards Kuantan driving motor lorry WC 9929 with its right wheels about a foot from the centre white line of the road when both he and his attendant heard a sound suggesting that something had collided with the rear of the lorry. He stopped the lorry and on alighting from it noticed that a motor-cyclist was lying dead on the road at his rear.

DW1 insisted that he had not overtaken or tried to overtake the motor-cyclist. He went on to explain that as there was heavy traffic it was not possible to overtake a motorcycle at that point.

Now according to particulars appearing in the sketch plan and its key which were agreed documents, the width of the motor lorry was 7 feet 6 inches and the width of the road F-C was 28 feet made up of two lanes of 14 feet each. On each side of the road was a 6 to 7 feet wide bicycle track for cyclists and pedestrians. These bicycle tracks were at the same level and an extension of the metalled motor road.

I find that I cannot accept DW1's contention that the question of overtaking a motor-cyclist at that point in the road simply could not arise because of heavy traffic from the opposite side. A motor lorry, having a width of 7 feet 6 inches, travelling a foot from the centre white line, would allow a 5 feet 6 inches passage between the lorry and the left edge of the road sufficient to allow the lorry to safely overtake a motor-cyclist travelling say 2 feet from the left edge of the motor lane.

But clearly to try and overtake a motor-cyclist who was riding more than 3 or 4 feet from the left edge of the road when there was oncoming traffic on the opposite lane would have been dangerous.

The witness Tang Kum Mun PW1 testified that the motor lorry overtook him when he was riding his motorcycle 3 to 4 feet from the left edge of the motor lane. He went on to say that the motor lorry went on to try to overtake another motor-cyclist also proceeding towards Kuantan travelling as PW1 did, about 3 feet from the left edge of the motor lane. The lorry in trying to overtake the

motor-cyclist in front of PW1, went over the centre white line. PW1 said, "As it (the lorry) was half way through overtaking the motorcycle it (the lorry) suddenly went into the path of the motorcycle and the left rear side of the lorry walloped the motorcycle. Then I saw an oncoming car from the opposite direction. I slowed down. I saw that the motor-cyclist had fallen towards the right of the motorcycle which had also fallen on the road".

At page 11 of AB1 is the relevant post mortem report which indicates that substantial force was applied to the whole of the right side of the deceased resulting in abrasions from head to toe – on the right side. The right mandible was broken and there was an extensive lacerated wound over the lateral aspect of the right thigh exposing muscle and tendon.

There were injuries on the left side as well including fractures of the left 4th, 5th, 6th and 7th ribs, but the gory picture painted for me by the post mortem report is that the left side of the lorry came into contact with the right side of the deceased, the right side of the face and the right mandible taking the brunt of the impact.

This leads me, on the probabilities, to accept PW1's version of how the accident happened except that it seems to be that the motor-cyclist was perhaps nearer to 6 feet than 3 or 4 feet from the left edge making it necessary for the lorry to go over the centre line in trying to overtake her.

The fact that PW1 did not contact the police, *per se* does not necessarily mean that he did not witness the accident. The deplorable reluctance of members of the public to be involved in police investigations is well-known. PW1 gave me the impression that he was a witness of truth.

The oncoming car referred to by PW1 obviously made it necessary for the lorry driver to get back to his lane in a hurry and it was in doing so that the rear left side of the vehicle caught the unfortunate motor-cyclist.

Encik Veloo for the defence argued that such an impact would have thrown the motorcycle away from the road where it would have fallen on its left side. However it has to be noted that apart from the damaged right signal light and bent right pedal the motorcycle was not damaged at all. This suggests to me that the lorry only came into contact with the motor-cyclist and not the motorcycle and that the motorcycle was not thrown off by the impact but no doubt the motor-cyclist lost complete control of the cycle and it fell where it did because of that lack of control and its own speed propelled it the distance of 22 feet 10 inches (PL) taking with it the motor-cyclist up to the point SQR and as the motor-cyclist fell off the machine her slippers were hurled in the direction the motorcycle was travelling, that is forward, as were the crash helmets.

I have given consideration to the version of the defence that at no time was the motor-cyclist overtaken and to the theory that the only way in which the accident could have happened was for the motor-cyclist to have run into the rear of the motor lorry.

Even ignoring the evidence of PW1, I find such a theory not plausible. There was no suggestion that the motor-cyclist was one of those that one frequently sees weaving in and out of a long line of traffic who might have made an error of judgment and crashed into the rear of the lorry and there was no suggestion that the lorry had come to a sudden stop or had even had to suddenly slow down, resulting in a collision from the rear. Further, if there was a collision from the rear I would have expected to have found injuries on the anterior aspects of the head and face of the motor-cyclist. I would also have expected to find that there was damage to the front of the motorcycle.

Having made a finding of fact on the balance of probabilities that the motor-cyclist was overtaken when she was riding some 6 feet from the left edge of the road with the motor lorry having to go beyond the centre white line to do so, it seems to me that the motor-cyclist was herself negligent in not having anticipated that with the heavy traffic on both motor lanes there was every possibility that the motor lorry that was overtaking her would have had to swerve back into its own lane. PW1 testified that when the motor lorry commenced overtaking her, the deceased proceeded on without moving either to the left or right. A prudent motor-cyclist would have moved nearer the left edge of the road when the motor lorry proceeded to encroach beyond the centre white line in overtaking her.

In the event I find that the driver of the motor lorry was 70% to blame for the accident and the deceased motor-cyclist 30% to blame.

On quantum, the parties had agreed that on a 100% basis the special damages to be awarded should be $1,156 and the loss of support at $200 per month (which latter amount, on the evidence led, I consider not unreasonable).

On the evidence I find that the dependants of the deceased were the child Lee Goon Ming and the deceased's father Leong Chim who were aged 4 years and 78 years respectively when the writ was caused to be issued.

This claim is brought by the Plaintiffs who are the administrators of the estate of the deceased "for their own benefit and for the benefit of the dependants of the said deceased . . . . . ". I take this to mean that the claim is both under section 8 and section 7 of the Civil Law Act for the benefit of the estate of the deceased and of the dependants of the deceased, respectively.

The amount that will accrue to the estate of the deceased will be 70% of the conventional figure (for a healthy woman in the prime of her life) of $4,000. Since the 1st Plaintiff, as husband of the deceased, becomes at law the sole beneficiary of her estate (she having died intestate) and as I have found that he was not a dependant of the deceased, there will be no question of merger of the amount awarded to the estate of the deceased with the amount to be awarded to the dependants (*Neo Seo Thun & Anor.* v. *Ng Peng Hui*).

As to the loss of dependency, the deceased having been 35 years of age at the time of her death would have had a life expectancy of say, 20 years, but considering the ages of the dependent child and the dependent father of the deceased, dependency has to be calculated on the basis of the child attaining 18 years of age.

Accordingly there will be judgment for the Plaintiffs as follows:

(a) $2,800 under section 8 of the Civil Law Act together with interest thereon at 6% per annum from the date of service of the writ until judgment and thereafter at 8% per annum.

(b) 70% of $1,156 as special damages together with interest thereon at 3% per annum from July 10, 1978 (date of accident) to the date of judgment and thereafter at 8% per annum.

Items (a) and (b) shall be paid to the estate of the deceased.

(c) 70% of $7,200 being the loss of dependency at the rate of $200 a month for the rounded off period of 3 years from the date of death of the deceased to the date of judgment together with interest thereon at 3% per annum from the date of service of the writ to date of judgment and thereafter at 8% per annum.

(d) 70% of $22,500 being the amount to cover the loss of dependency for a further period of 13 years with interest thereon at 8% per annum from the date of judgment.

The aggregate of items (c) and (d) shall be apportioned on the basis of 15% thereof to the said Leong Chim and 85% to the Public Trustee to be held in trust for the said Lee Goon Ming for his maintenance and until he attains the age of 18 years.

(e) The Defendants shall pay the Plaintiffs the costs of the action as taxed by the proper officer of the court.

Order accordingly.

Solicitors: *Balendran, Chong & Bodi; V.P. Nathan & Partners.*

PUBLIC PROSECUTOR v. TAN KEO HOCK

[O.Cr. J. (George J.) November 19, 1981]
[Raub – Criminal Trial No. 3 of 1981]

Criminal Law and Procedure – Charge of having control of ammunition – Statement of accused to police made after arrest – Whether admissible – Whether made in hearing of police officer not below rank of inspector – Information leading to discovery – Statement not proved – Evidence Act, 1950, s. 27 – Criminal Procedure Code (F.M.S. Cap. 6), s. 113.

Evidence – Information leading to discovery – Statement not proved – Whether admissible.

In this case the accused was charged with having under his control ammunition. The prosecution case was that the accused made a cautioned statement after his arrest. The statement was made in Hokkien to a Detective Corporal but there was present an ASP who could not speak Hokkien although he said he understood what was said in Hokkien. It was alleged that as a result of what the appellant said the police went to a rubber plantation where after digging at a number of places in the undergrowth near the accused's house a Milo tin containing the ammunition was found. The question was whether the evidence of the statement and of the discovery of the ammunition was admissible.

Held: (1) in this case it could not be said that the accused made a statement in the hearing of the ASP within the meaning of the phrase "in the hearing of" as used in Regulation 21(1)(a) of the Essential (Security Cases) Regulations 1975 and therefore whatever was stated by the accused to the detective corporal was not admissible;

(2) the actual words used by the accused in this case were not proved and therefore whatever was stated by the accused that led to the discovery of the ammunition was inadmissible;

(3) there was more than a reasonable doubt as to whether the accused had knowledge of where exactly the rounds of ammunition were and even of whether it was ammunition that he and the police party were looking for. As there was that doubt of even knowledge the question of control or possession of the ammunition did not arise;

(4) the prosecution had therefore failed to prove a *prima facie* case against the accused and the accused must be acquitted.

Cases referred to:

(1) *Tai Chai Keh* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 105, 110.
(2) *Hira Gobar* v. *Emperor* A.I.R. 1919 Bom. 162.
(3) *Baghel Singh* v. *Emperor* A.I.R. 1929 Lah. 794.
(4) *Lim Ah Oh & Anor* v. *Rex.* [1950] M.L.J. 269, 270.
(5) *Tan Hung Song* v. *Rex.* [1951] M.L.J. 181, 182.
(6) *Pulukuri Kotayya* v. *King Emperor* L.R. 74 I.A. 65.
(7) *Public Prosecutor* v. *Er Ah Kiat* [1966] 1 M.L.J. 9, 11.
(8) *Emperor* v. *Chokhey* A.I.R. 1937 All. 497.

CRIMINAL TRIAL.

Ahmad Zaki bin Haji Hussin (Deputy Public Prosecutor) for the prosecution.

Karam Singh for the accused.

Cur. Adv. Vult.

George J.: The Charge against the accused, TAN KEO HOCK, was as follows:–

"that you on the December 29, 1976 at about 6.10 p.m. at Batu 3 Jalan Lipis/Raub in the District Raub, in the state of Pahang, in a security area as proclaimed by the Yang Di Pertuan Agong vide proclamation No. PU(A) 148 dated May 15 1969, did have under your control 38 rounds of 7.65 m.m. ammunitions without lawful authority and that you have thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act, 1960 (Revised 1972)."

The accused resided with his family in one or more rooms adjoining a smoke house off the main road at or about the 3rd mile Raub/Kuala Lipis Road. The smoke house and the adjoining dwelling house were situated in an unkempt rubber plantation. There was undergrowth among the rubber trees. The photographs P3A&B give some idea of the extent of the state of the undergrowth. The rubber plantation and the aforesaid buildings were not fenced in. No evidence was led as to the ownership of the plantation or of the smoke house.

Sometime in the early afternoon of December 29, 1976 PW1 ASP Lee Wai Hong arrested the accused at or about the 2nd mile Raub/Kuala Lipis Road. He was subjected to a lengthy interrogation by a Detective Corporal Tan Sin Peng (PW5) and one Detective Constable Ku Hamdan. PW1, ASP Lee was also present from time to time while the accused was being interrogated but perhaps because he did not speak the Hokkien dialect (in which the interrogation was conducted) did not involve himself in the interrogation. His evidence was that he was an observer of the interrogation.

In the course of the investigation the accused appeared to have given information that one Tee Teow Chuan had possession or control or had knowledge of the whereabouts of some ammunition. Tee Teow Chuan was promptly arrested and interrogated and then both the accused and Tee Teow Chuan were brought to the same room and interrogated together which the Court of Appeal (as it then was) had stated is a highly undesirable practice especially if an attempt is made to play one off against the other (See *Tan Chai Keh* v. *Public Prosecutor*[1]) This was exactly what